THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

VOL. XIV, No. 10 OCTOBER, 1940 PAGES 217-240

COMPLETE NUMBER 275

Published by

THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

The New Jersey Court of Chancery has denied a New York corporation the right to maintain suit on a New Jersey contract, entered into while the corporation was unlicensed and doing business in New Jersey, even though it became licensed subsequently. The court, under a reciprocal New Jersey law, applied to the New York corporation the New York law which would have been applicable to a New Jersey company under similar circumstances. (See page 230.)

Interesting decisions relating to the inspection of corporate books have recently been rendered to the following effect:

CALIFORNIA—A director, not a stockholder, was not permitted to delegate the inspection of his company's books to others. (See page 222.)

DELAWARE—A stockholder of record was held entitled to prepare a list of stockholders from the corporate books. (See page 224.)

ILLINOIS—Inspection of books for the purpose of soliciting proxies was upheld. (See page 225.)

OHIO—An Ohio corporation, keeping books in New York at sole business office there, was held not obliged to bring its books to Ohio for inspection upon a stockholder's demand. (See page 227.)

Raymond Kenway

President.

Watch Out, Mr. X!

"Nonsense!" exclaims Mr. X, "Why should a company like ours employ an outside Transfer Agent for its stock any more than it would have its books kept outside?"

Ah, there's a little difference, Mr. X.

Your stock certificates and your stock books involve the evidence of ownership of your company. Taking in a certificate for shares from one person, cancelling it, and issuing another in its place to another person—that's changing the evidence of title to somebody's property. Don't make mistakes there, Mr. X!

It gives the officers and directors of even a small or closely held company a fine feeling of safety and peace of mind to know that when titles to other people's property must be changed on the company's books it is being done for the company by a responsible, experienced, *outside* agency.

Write or telephone any C T office for information as to what Corporation Trust transfer service would do for your company and how little it costs.

The Corporation Trust Company

●

C T Corporation System

●

and associated companies

Albany	158 State Street
Atlanta	57 Forsyth Street, N.W.
Baltimore	10 Light Street
Boston	10 Post Office Square
Buffalo	295 Main Street
Chicago,	208 South La Salle Street
Cincinnati	441 Vine Street
Cleveland	925 Euclid Avenue
Dallas	1309 Main Street
Detroit	719 Griswold Street
Dover, Del.	30 Dover Green
Jersey City	15 Exchange Place
Kansas City	926 Grand Avenue
Los Angeles	510 S. Spring Street
Minneapolis,	409 Second Avenue S.
New York	120 Broadway
Philadelphia	123 S. Broad Street
Pittsburgh	535 Smithfield Street
Portland, Me.	57 Exchange Street
San Francisco,	220 Montgomery St.
Seattle	821 Second Avenue
St. Louis	314 North Broadway
Washington	1329 E Street, N.W.
Wilmington	100 West 10th Street

What Constitutes Doing Business

Advertising Activities

It has been held that a foreign corporation may enter a state for the purpose of soliciting orders for advertisements to appear in a publication printed in another state, after acceptance there, without being required to be licensed in the state in which the orders are solicited.[1] A similar conclusion has been reached where the material to be published outside the state was a trade catalog prepared for a customer of a state in which a foreign corporation was not authorized to do business.[2]

The furnishing by a foreign corporation, from without the state, of advertising material, such as type, cuts, mats and display material, to be used by the purchaser locally, has been held to constitute interstate commerce, which would not require qualification on the part of the foreign corporation.[3]

Where, however, the foreign corporation enters the state to effect the actual advertising itself, a different conclusion has been reached by the courts. Where, for instance, a foreign corporation agrees to set up signs in a state in which it is not licensed to do business, and brings the signs into the state, puts them in place and maintains them, this is regarded as "doing business" so as to require qualification.[4]

Entering into contracts with merchants in a state in which a foreign corporation was not authorized to do business, followed by the exhibition of advertising films advertising the merchants' wares in local theatres, has been ruled to constitute intrastate business, even though the films were manufactured outside the state.[5]

[1] *American Contractor Publishing Co. v. Bagge et al.*, 91 NYS 73; *American Contractor Publishing Co. v. Nocenti*, 139 NYS 853; *Stevens-Davis Co. v. Peerless Service Laundry*, (N. J.) (1934) 170 Atl. 619; *Bell Telephone Co. of Philadelphia v. Galen Hall Co.*, (N. J.) (1909) 72 Atl. 47; *Alfred M. Best Co., Inc. v. Goldstein*, (Conn.) (1938) 1 Atl. 2d 140; *United Newspapers Magazine Corp. v. United Advertising Companies, Inc.*, (Ill.) (1938) 17 N. E. 2d 345.

[2] *Blackwell-Wielandy Co. v. Sabine Supply Co.*, (Texas) (1931) 38 S. W. 2d 654.

[3] *Norm Advertising, Inc. v. Parker*, (La.) (1937) 172 So. 586; *Outcalt Advertising Co. v. Citizens State Bank of Roseau*, (Minn.) (1920) 180 N. W. 705; *Bogata Mercantile Co. v. Outcalt Advertising Co.*, (Texas) (1916) 184 S. W. 333.

[4] *North American Service Co. v. A. T. Vick Co.*, (Texas) (1922) 243 S. W. 549; *Motor Supply Co. v. General Outdoor Advertising Co.*, (Texas) (1932) 44 S. W. 2d 507; *Street Railway Advertising Co. v. Lavo Co. of America*, (Wis.) 198 N. W. 595; *Imperial Curtain Co. v. Jacob et al.*, (Mich.) (1910) 127 N. W. 772.

[5] *State, for use and benefit of Independence County v. Tad Screen Advertising Co.*, (Ark.) (1938) 133 S. W. 2d 1; *State ex rel. Independence County v. Alexander Film Co.*, Circuit Court, Independence County, Arkansas, November 30, 1938, CCH Court Decisions Requisition No. 205662.

Domestic Corporations

California.

Director, not a stockholder, held not entitled to delegate inspection of books to others. In passing upon the question whether the director of a California corporation, who was not a stockholder, had the right, under the statutes, to delegate her right of inspection of the corporate books to her attorney and her accountant, the District Court of Appeal, First District, Division 2, said, after an examination of Sections 355 and 356 of the Civil Code: "The parties agree that there are no authorities directly covering the question involved, and our interpretation of the statutes must therefore be based upon first impressions. It is our view from reading the sections together as one statute, that the legislature intended to confer upon the shareholder the privilege to delegate to an agent or attorney his right of inspection, but that it did not give this power of delegation to a director who was not a shareholder." An order of the lower court adjudging the petitioners, persons acting for the corporation, guilty of contempt for failure to permit the agents of the director to examine the books independently, was annulled. *Dandini et al. v. Superior Court, Alameda County,* 100 P. 2d 535. Leo Friedman, Long Beach, for petitioners. Johnson & Harmon, San Francisco, for respondent.

Delaware.

Holder of preference stock, on which accumulated dividends remained unpaid, denied relief under amendment providing for optional exchange of such stock for newly created prior preference and new common stock. Complainant became a holder of Preference stock of defendant company at a time when two classes of stock were provided for and outstanding, Preference and Common. His suit arises out of an amendment, under a plan of recapitalization, authorizing a Prior Preference stock, in addition to Preference and Common, and permitting, but not requiring, the exchange of each share of Preference stock for one share of Prior Preference stock and three shares of new Common. There were unpaid accumulated dividends on complainant's Preference stock. He sought, among other relief, to prevent payment of dividends declared on the Prior Preference stock and to establish a vested interest in the accumulated, unpaid dividends on his own stock so as to require payment of such dividends before payment of dividends on the Prior Preference Stock. The Vice Chancellor, noting that the exchange of complainant's stock was optional, observed that the pertinent statute, Sec. 26 of the Delaware Corporation Law, "permits the amendment of corporate charters, authorizes changes in the preferences incident to the ownership of preferred stock." Referring to the charter of the company, the court said: "This charter contains nothing to prevent the creation of classes of stock having priorities over the pre-existing classes." "The new Prior Preference stock has no effect upon the right of the Preference to participate in the corporate assets before

the Common, which is all that the charter stipulated when the Preference stock was issued. The Preference stockholders are entitled to adequate protection and enforcement of the rights lawfully conferred upon them; but that does not mean an enlargement of the old, or an addition of new rights. The *Keller* and *Johnson* cases (*Keller v. Wilson & Co.*, 190 A. 115; *Consolidated Film Industries v. Johnson*, 197 A. 489) dealt with accumulated unpaid dividends to which Preferred stockholders were entitled as against Common. Otherwise, the situations were wholly different from that now before me, for in each of the cited cases there was an attempt to extinguish the right to accumulated dividends. Here, that right is preserved. It is directly determined in the *Morris* case (*Morris et al. v. Amer. Pub. Utilities Co.*, 122 A. 696) that the payment of dividends on a new prior preferred stock, under circumstances such as the present, does not destroy the right of the old preferred stockholders to accumulated dividends, and hence, should not be enjoined." The court concluded "complainant has shown no grounds justifying interference with any of the rights which the amendment purports to confer upon the Prior Preference stockholders." *Shanik v. White Sewing Machine Corporation*, Court of Chancery, New Castle County, August 6, 1940. Commerce Clearing House Court Decisions Requisition No. 243224. Harold B. Howard of Hering, Morris, James & Hitchens of Wilmington and H. Paul Shanik of Brooklyn, New York, for complainant. Hugh M. Morris and S. Samuel Arsht of Wilmington, John T. Scott of M. B. & H. H. Johnson of Cleveland, Ohio, and James C. Stephens of Beekman, Bogue, Stephens & Black of New York City, for defendant.

Corporation, whose charter was voided for non-payment of franchise taxes, ruled "dissolved" for purpose of appointment of receiver. In an action brought to obtain the appointment of a receiver for the defendant corporation, a stockholder applied for leave to intervene for the purpose of moving to dismiss the bill upon two grounds. The first was that the company was not dissolved. It had, however, had its charter declared void for non-payment of taxes under Sec. 71 of the Delaware Franchise Tax Law. The Court of Chancery, noting that "the language of Section 71 is positive that if a corporation shall for two consecutive years neglect or refuse to pay taxes, its charter *'shall be void'* and all powers conferred by law upon it *'are declared inoperative,'*" with a single exception not applicable here, concluded that "a corporation whose charter is void and powers inoperative, under Section 71, is dissolved within the meaning of Section 43 of the Corporation Law," so as to permit the appointment of a receiver and that the issuing, filing and publication of a proclamation by the Governor proclaiming the repeal was not a prerequisite to the voidance of a charter for non-payment of taxes. The court also ruled that the pendency of a suit in a Federal court, seeking a receiver to protect the property of the corporation and to enforce alleged rights of action against persons not parties to either proceeding, would not deter the Court of Chancery from the appointment of a receiver under the statute for the final settlement of the corporation's affairs.

Wuerfel v. F. H. Smith Company, 13 A. 2d 601. Commerce Clearing House Court Decisions Requisition No. 239313. Howard Duane of Wilmington, for complainant. Christopher L. Ward, Jr., of Wilmington, for defendant. Harry P. Joslyn of Wilmington and R. H. McNeill and T. S. Settle of Washington, for petitioner, Alma Morton MacDonald.

Stockholder of record held entitled to prepare list of stockholders from corporate books. The petitioner sought by mandamus to compel the respondent corporation to permit her, as a registered stockholder, to make a list of stockholders from the respondent's stock ledger. The corporation had permitted the inspection of the ledger but refused permission to prepare the list of stockholders. The Delaware Superior Court, New Castle County, ruled that under the statute, Sec. 29 of the General Corporation Law, the petitioner was entitled not only to inspect the books but also to make a copy of the list of stockholders, as under that section every "stockholder" was entitled to examine the stock ledger of the corporation and this stock ledger was the only evidence as to who the stockholders are who are entitled to examine the list or the books of the corporation. "There can also be no question," remarked the court, "that if there be a right to examine the Stock Ledger to ascertain the list of stockholders there flows from that right, as a corollary thereto, the corresponding right to make a copy of the list. If there be a right to examine the list of stockholders, there is a corresponding right to make the examination beneficial by taking copies thereof." An allegation that petitioner was merely a nominee, and not the owner of the stock registered in her name, was disposed of by a reference to the statute which "does expressly limit and define the class which may be given the right to inspect, viz., those persons whose names appear on the stock ledger." *The State of Delaware, upon the relation of Helen M. Healy v. Superior Oil Corporation,* 13 A. 2d 453; Commerce Clearing House Court Decisions Requisition No. 235292. William S. Potter, for relator. Stewart Lynch, for respondent.

Chancery Court indicates non-user of charter for ten years would warrant recall of franchise. The case of *Morford, Attorney-General, ex rel. Hallie Gray et al. v. The Trustees of The Middletown Academy,* is an instance of a suit brought to effect the forfeiture of the charter of an inactive corporation, created in 1826 by special act of the General Assembly, for non-user of its franchises. The Court of Chancery, while concluding that "it is plain that the unexcused and unexplained failure of defendant for ten years to carry out the essential purpose of its existence constitutes a non-user of franchises of such a character as to warrant their recall by the authority which granted them," sustained a demurrer to the bill on the ground that the bill was defective as it had not been signed nor verified by the complainant, the Attorney-General, as required by Rule 31 of the Court. *Morford, Attorney-General et al., v. Trustees of Middletown Academy,* 13 A. 2d 168. Commerce Clearing House Court Decisions Requisition No. 237061. Herbert L. Cohen of Wilmington, for complainant and relators. Harry K. Hoch of Wilmington, for defendant.

Illinois.

Inspection of books for purpose of soliciting proxies upheld. The Appellate Court of Illinois, Fourth District, upholds a stockholder in her right to inspect corporate books where the purpose was for the solicitation of proxies. This purpose the court regarded as a proper one. The judgment of the trial court, directing that a writ of mandamus issue ordering plaintiff and her attorney to examine the books, records and list of stockholders and make extracts, was affirmed. *Hohman v. Illinois-Iowa Power Co. et al.*, 26 N. E. 2d 420. Commerce Clearing House Court Decisions Requisition No. 235752. Kramer, Campbell, Costello & Weichert of East St. Louis, for appellants. J. H. Goldenhersh of East St. Louis, for appellee.

New York.

Dissenting stockholders' right of appraisal viewed as accruing immediately after proposed sale of bulk of corporate property is authorized under Secs. 20 and 21 of Stock Corporation Law. On September 28, 1939, the stockholders of respondent corporation, by a vote of more than two-thirds, authorized the board of directors to consummate a plan for the sale of the bulk of its property to the City of New York. The plan provided that it should not be declared operative unless and until 90% of certain designated securities and of shares of stock were deposited on or before November 30, 1939. Other conditions were also enumerated. "In short," observed the Supreme Court, Special Term, Kings County, "the consummation of the plan and agreement are dependent on the happening of certain future events, and, therefore, by the very nature of the provisions the transaction is not an absolute sale but a *contract to sell.*" The petitioners, stockholders, instituted proceedings under Sections 20 and 21 of the Stock Corporation Law for the appointment of appraisers to estimate and certify the value of their stock, claiming the right to an appraisal and payment, subject to compliance with the statutes, became operative immediately upon the vote of the stockholders approving the proposed sale. The respondents contended the stockholders were not yet entitled to the appointment of appraisers and to the designation by the court of the time and place of their first meeting and would not be entitled to such appointment and designation *until the consummation of the sale.* The Court, in weighing these contentions, observed it could not agree that the Legislature intended that a sale must be actually consummated before a minority stockholder's right to appraisal and payment accrues. "At a meeting of stockholders called for the purpose of consenting to a sale under Section 20 of the Stock Corporation Law, the stockholders never consummate the sale but grant the necessary consent which is authority to effectuate a *proposed sale* by the corporation through its officers and directors. In the instant case, therefore, the minority stockholders' right accrued as soon as the majority stockholders 'took action'." The court concluded "that the mere approval of the

proposed sale herein adversely affects the petitioners despite the fact that the contract may never be consummated, and it would, therefore, be unjust to deprive the petitioners of their right of immediate appraisal." *Geiler v. Brooklyn-Manhattan Transit Corporation,* 18 N. Y. S. 2d 788. Philip G. Gross of New York City, for petitioner. W. Harry Sefton of Brooklyn, for respondent.

Ohio.

Portion of Sec. 8623-72, giving to dissenting stockholders' shares the value demanded by the stockholders under certain circumstances, ruled invalid. At a stockholders' meeting, 3591 shares voted in favor of accepting a proposition for the sale of the remaining corporate assets, while 1125 shares voted against it. The holders of 818 of such minority shares proceeded to invoke Sec. 8623-72, General Code, by submitting their written objections to the corporation within the twenty days specified in the statute and demanded payment of the fair cash value of their shares, placing such value at about $100 per share. This the corporation refused in writing. The Supreme Court of Ohio said: "It might be well to observe here that the per share amount demanded by the dissenting stockholders as the fair cash value of their stock is appreciably greater than the per share amount which will be received by other stockholders upon distribution of the amount derived from the disposal of the corporate assets. The paramount and precise question for decision is whether in the existing circumstances the part of Section 8623-72, General Code, stipulating that the fair cash value of the shares of dissenting stockholders 'shall conclusively be deemed to be equal' to the amount demanded by them, has an unconstitutional operation against the majority stockholders, as being violative of the due process section of the 14th Amendment to the federal Constitution. It is the contention of the defendants that since the statute makes no provision for notice of any kind to the majority stockholders of the demands of the minority and gives them no opportunity to be heard before a competent tribunal in a matter touching their personal interests, the conclusive presumption contained therein as to the value of the shares of the dissenting stockholders, of which the plaintiffs are attempting to take advantage, deprives the majority of their property without due process of law and is therefore unconstitutional in its effect." "Essential elements of due process of law are (1) notice, and (2) an opportunity to be heard. 8 Ohio Jurisprudence 707, Section 591. Therefore, a statute containing a conclusive presumption, or a presumption which operates to deny a vitally affected person fair opportunity to repel it, violates the due process clause of the Constitution. 12 American Jurisprudence 317, Section 625. Such is the effect of the pertinent part of Section 8623-72, General Code, in the present case as to the majority stockholders, and it is therefore unconstitutional in its operation." A judgment in favor of the plaintiff minority stockholders was reversed. *Voeller et al. v. Neilston Warehouse Co. et al.,* 26 N. E. 2d 442. Commerce Clearing House

Court Decisions Requisition No. 234854. Arnold, Wright, Purpus & Harlor, Earl F. Morris and Krumm & Schwenker of Columbus, for appellants. O. R. Crawfis and Carrington T. Marshall of Columbus, for appellees. *(Appeal filed in The Supreme Court of the United States, May* 23, 1940; *Docket No. 97, October* 1940 *Term.)*

Ohio corporation, keeping books in New York at sole business office there, ruled not obliged to bring books to Ohio for inspection upon stockholder's demand. Plaintiff stockholder sought a mandatory injunction requiring the defendant Ohio company, having its sole business office in New York City, where its records and books of account were kept, to bring to Cleveland, Ohio, all its books of account and records so that he, as a stockholder, could examine them. In response to plaintiff's written demand, the defendant notified him that he would be granted permission to inspect the books of account and records in the City of New York at any reasonable time. Referring to the applicable statute, Section 8623-63, General Code, the Ohio Court of Appeals, Eighth District, Cuyahoga County, observed: "Nowhere in this statute is the corporation limited to the keeping of its books in the State of Ohio. The corporation is commanded by this Statute only to keep and maintain adequate correct accounts of its business transactions. Without any further limitation by statute, it would follow logically that the corporation may keep such accounts at the place where its business is transacted, even though it be outside of the State of Ohio. We come to the conclusion therefore, that it is not absolutely necessary that such records of business of the corporation be kept at its principal office in the State of Ohio." "The equities of this case are not with the plaintiff. In balancing the conveniences of the parties it would seem that the plaintiff will be less inconvenienced by going to New York to examine the books and records of the company where they have been kept for the last ten years, than all the stockholders would be inconvenienced and damaged by the sending of the books and records of the company to Ohio. We have therefore concluded that the said mandatory injunction should not issue." *Cornell v. The Nestle LeMur Company,* Ohio Court of Appeals, Eighth District, Cuyahoga County, April 15, 1940. Commerce Clearing House Court Decisions Requisition No. 235603. Ernest Cornell of Cleveland, for plaintiff-appellee. Garfield, Cross, Daoust, Baldwin & Vrooman of Cleveland, for defendant-appellant.

Foreign Corporations

Kansas.

Unlicensed foreign corporation held entitled to use the state courts to enforce contract made in another state. An unlicensed foreign corporation brought an action in a Kansas court to recover the balance of premiums due on an insurance contract made in Missouri. The lower court ruled that the plaintiff was not entitled to sue in the state courts by reason of not being licensed as a foreign corporation.


MIDNIGHT
OIL

matter - - fuse blown out?

young lawyer burning the traditional midnight oil.

Rush of law business?

detail work; client must be qualified as foreign corporation in half a dozen states right away.

But doesn't he know about the Corporation Trust system--that it makes such drudgery unnecessary?

Not yet--his first experience--but he'll learn.

When a lawyer has a corporation client to be organized or qualified in any state or states outside his own, the Corporation Trust system will procure from official records and put before him the details of every requirement in each different state and the forms with which to comply with those requirements; from official sources it will bring him complete information as to the fees and taxes to be paid; and when forms and papers have been completed it will take them from the lawyer at that point and see that the completing details are carried out—the publishing, the advertising, the filing, the recording, the registering, as each state may require . . .

. . . Corporation Trust saves *extra work* for the lawyer and brings him greater safety, speed and satisfaction.

The Kansas Supreme Court, however, upheld the plaintiff's right to maintain the action, observing that there appeared to be no Kansas statute "which specifically prohibits a foreign corporation from any use of the courts of our state because of the fact that it has not applied for and received a certificate from the secretary of state to do business in this state as a foreign corporation." *Heart of America Insurance Agency, Inc. v. Wichita Cab & Transport Co.*, 151 Kan. 420, 99 P. 2d 765. Commerce Clearing House Court Decisions Requisition No. 233617. William J. Wertz, Vincent F. Hiebsch, Forest V. McCalley and Milton Zacharias of Wichita, for the appellant. John W. Blood, Francis W. Prosser and C. Zimmerman of Wichita, for the appellee.

New Jersey.

Court of Chancery denies New York corporation right to maintain suit on New Jersey contract entered into while unlicensed and doing business in New Jersey, even though licensed subsequently, by applying New York law under reciprocal provision. A New York corporation had carried on business in New Jersey for several years prior to qualification, during which time it entered into a contract in New Jersey with one of the defendants, which it now sought, after having been licensed, to enforce in a New Jersey court. The Court of Chancery, in discharging an order the complainant company had obtained directing the defendant to show cause why he should not be enjoined from breaching the contract during the pendency of the suit, referred to Sec. 218 of the New York General Corporation Law. This section provides that a foreign corporation doing business in New York cannot maintain an action in the New York courts on a contract made by it in New York unless, before the making of the contract, it has obtained a certificate of authority. The Court of Chancery applied this law to the complainant in this case, by reason of the fact that a New Jersey statute provides that when the laws of another state impose upon corporations of New Jersey, doing business therein, greater penalties, obligations or requirements than the laws of New Jersey impose upon foreign corporations, then the same penalties, obligations and requirements shall be imposed in New Jersey upon the corporations of the other state. R. S. 14:15-5, N. J. S. A., 14:15-5. "The result," said the court, "is that complainant is here under the same disability which New York lays on New Jersey corporations. No suit can be maintained here on the contract." *Babe Kaufman Music Corporation v. Mandia et al.*,* 13 A. 2d 790. Joseph J. Corn of Newark, for complainant. Powell & Parker of Mount Holly, for defendants.

* The full text of this opinion is printed in **The Corporation Tax Service, New Jersey, page 503.**

Mandamus order for presentation of books and records of foreign corporation and its wholly owned subsidiary to certified public accountant selected by court, upheld. Respondent stockholder had

obtained an alternative writ of mandamus in the New Jersey Supreme Court, directing appellant Delaware company and its wholly owned subsidiary, also a Delaware company, to present their books and records to a certified public accountant selected by the court for examination. The appellant maintained its office in Newark, New Jersey, and kept all of its books and records there. The subsidiary, actively engaged in the manufacturing business in the same city, kept all of its books and records at the office of the appellant company, of which respondent was a substantial stockholder. The New Jersey Court of Errors and Appeals affirmed the judgment allowing the writ, saying: "In awarding the examination, the Supreme Court was not regulating the affairs of a foreign corporation, but was affording an opportunity to stockholders having a substantial interest in the Sirian Lamp Company, with the aid of an impartial accountant, to examine the books and records of the company and its wholly owned subsidiary. The common law, when facts appeared as they do in this case, recognized the right of a stockholder to inspect the books of a corporation, if the application was made in good faith and concerning a matter germane to the protection of existing rights. Feick v. Hill Bread Co., 91 N. J. L. 486, 488. The books and records being within this state and not subject, so far as we know, to inspection at the command of any other court, may be examined by direction of the Supreme Court. In fact, without such remedy the aggrieved stockholder, acting in good faith, would be denied a remedy for no reason whatever." *Siravo v. Sirian Lamp Company,* 12 A. 2d 682. Commerce Clearing House Court Decisions Requisition No. 236555. Kristeller & Zucher, Lionel P. Kristeller of Newark, for appellant. Gross & Gross, Isaac Gross, Bernard A. Green of Jersey City, for respondent.

New York.

Mere presence of president in state or stock control of another corporation ruled not doing business for purpose of service of process. A case in which the New York Supreme Court, Special Term, New York County, ruled that neither the mere physical presence of the president of an unlicensed foreign corporation or its stock ownership or even stock control of another corporation was to be considered as doing business sufficient to make the foreign corporation subject to service of process is *Bieber v. Englander Spring Bed Co., Inc. et al.,** 18 N. Y. S. 2d 320.

* The full text of this opinion is printed in **The Corporation Tax Service,** New York, page 20,275.

Texas.

Corporation found to be "doing business" denied right to maintain suit because it had not obtained permit to do business in state. Where a foreign corporation agreed to do the work of cleaning and

painting a bridge in Texas and was active for six months in Texas in that work, the Court of Civil Appeals held that the corporation was clearly doing business in Texas, which it could not transact without a permit. The court also ruled that if the corporation was to be placed in a position to maintain an action in the courts of the state, it was required to allege affirmatively that it had a permit to do business in the state. As it failed to do this, the judgment of the lower court, in denying the company the right to maintain suit, was affirmed. *Anthony Miller, Inc. v. Taylor-Fichter Steel Construction Co., Inc.,** 139 S. W. 2d 658. Commerce Clearing House Court Decisions Requisition No. 233051. Chas. S. Pipkin of Beaumont and Alto V. Watson of Port Arthur and Conlen, La Brum & Beechwood and George E. Beechwood, of Philadelphia, Pa., for appellant. Orgain, Carroll & Bell of Beaumont and K. W. Stephenson of Orange, for appellee.

*The full text of this opinion is printed in **The Corporation Tax Service, Texas, page 519.**

Wyoming.

Installation of complex refrigeration equipment sold in interstate commerce held not to bring about carrying on of intrastate business. The contract between the parties, entered into at Denver, Colorado, provided for the shipment from that place to Cheyenne, Wyoming, to be installed by plaintiff there, of certain complicated refrigeration equipment and for the building of a "hardening room," to have an average temperature of 10 degrees below zero and of an anteroom to have an average temperature of 40 degrees. The plaintiff, the seller, agreed to furnish one erecting engineer to install the equipment, and the purchaser agreed to furnish all masonry, carpenter and electrical work. The Supreme Court of Wyoming overruled defendant's contention that intrastate business was carried on and that plaintiff was required to be qualified to do business in order to maintain suit, ruling that the activities of the plaintiff, considered as a whole, constituted interstate commerce. *Creamery Package Mfg. Co. v. Cheyenne Ice Cream Co.,** 100 P. 2d 116. Commerce Clearing House Court Decisions Requisition No. 233217. George F. Guy of Cheyenne, for appellant. Vincent Carter of Cheyenne, for respondent.

*The full text of this opinion is printed in **The Corporation Tax Service, Wyoming, page 615.**

Taxation

Iowa.

Company operating in Iowa held not required to collect the Iowa use tax on mail orders of Iowa residents sent to and filled by the company's stores in other states. In *Sears, Roebuck and Co. v. Roddewig et al.,** 292 N. W. 130, the Iowa Supreme Court ruled that a foreign corporation, authorized to do business in Iowa and con-

ducting a number of retail stores in that state, which also operated, outside of Iowa, mail order stores to which Iowa customers sent orders by mail, was not required to report and collect the Iowa use tax on shipments made from without the state to Iowa customers when filling such mail orders. The court regarded such mail order sales as activities outside Iowa, separate and distinct from its Iowa activities, which that state had no right to regulate. Commerce Clearing House Court Decisions Requisition No. 237783. Gamble, Read, Howland and Rosenfeld of Des Moines, for appellee. Fred D. Everett, Atty. General, and John E. Mulroney, Asst. Atty. General for appellants. (*Appeal filed in the Supreme Court of the United States, June* 18, 1940; *Docket No.* 255, *October* 1940 *Term.*)

---

* The full text of this opinion is printed in **The Corporation Tax Service,** Iowa, page 6209.

Company operating in Iowa held not required to collect the Iowa use tax on purchases made by Iowa residents in the company's stores located in neighboring states. In *Montgomery Ward & Co. v. Roddewig et al.,** 292 N. W. 142, the Iowa Supreme Court ruled that where an Iowa resident purchased property for use in Iowa from retail stores located near, but outside of Iowa, operated by the plaintiff company which was also doing business in Iowa, the plaintiff could not be required to collect the Iowa use tax on such out-of-state sales. Commerce Clearing House Court Decisions Requisition No. 237784. Stuart Ball and H. W. Bancroft of Chicago and Parrish, Colflesh & O'Brien (J. L. Parrish, Jr., Maxwell A. O'Brien) of Des Moines, for appellee. Fred D. Everett, Attorney General and John E. Mulroney, Asst. Attorney General, for appellants. (*Appeal filed in the Supreme Court of the United States, June* 18, 1940; *Docket No.* 256, *October* 1940 *Term.*)

---

* The full text of this opinion is printed in **The Corporation Tax Service,** Iowa, page 6219.

New York.

Sale of stock, located in New York City, to firms in other jurisdictions and shipped to them across state lines, ruled subject to stock transfer tax. Appellants, partners in an investment and security business, in New York City, after negotiations by telephone, telegraph and mail, sold certain stock which was in New York City, to firms in Philadelphia and Washington. The securities were subsequently mailed to banks in the latter cities, accompanied by sight drafts and the banks later remitted to the appellants. Title to the stock did not pass until payment was received by the appellants. Stock transfer stamps were affixed as required by Sec. 270 of the Tax Law and appellants sought a refund, raising a question as to the validity of the tax under the Federal Constitution, and contending, in this instance that a tax was imposed upon an agreement for the sale of shares of stock which were to be sold and delivered across state lines. The New York Court of Appeals affirmed a judgment

of the Court of Claims denying a recovery. In its opinion, the court said: "In the case at bar certain goods, to wit, shares of stock, were located in this State and were part of the common mass of property which undoubtedly was subject to taxation. The taxable event, to wit, the making of the agreement for the sale of the property, occurred in this State prior to the transportation of the goods in interstate commerce, and was an exercise of one of the incidents of ownership. In imposing a tax on the exercise of one of the incidents of ownership, no discrimination was practiced on interstate commerce." *O'Kane et al. v. The State of New York,** New York Court of Appeals, July 24, 1940. Commerce Clearing House Court Decisions Requisition No. 243036. Earl Q. Kullman, for appellant. John J. Bennett, Jr., Attorney-General, (Henry Epstein, Leon M. Layden and Jacob S. Holigsbaum, of counsel), for respondent.

*The full text of this opinion is printed in **The Corporation Tax Service,** New York, page 20,326.

Texas.

Texas company, whose right to do business had been forfeited for failure to pay the franchise tax, held nevertheless subject to the payment of annual franchise taxes during the years between the forfeiture and the company's dissolution. Such was the holding of the Court of Civil Appeals of Texas, San Antonio, in *Ross Amigos Oil Co. et al. v. State,* 131 S. W. 2d 316. (The Corporation Journal, January, 1940, page 87.) In affirming the judgment of the Court of Civil Appeals, the Texas Supreme Court said: "It is undisputed that after the forfeiture of the Oil Company's right to do business it exercised all the benefits and privileges conferred on a chartered corporation, except its right to sue and defend in the courts. It carried on its business, retained the proceeds derived therefrom, and up to the time it was finally dissolved it acted as though it had paid its franchise tax. To hold under these facts that a corporation could refuse to pay its franchise tax, and thereby defeat its obligation to pay same, would nullify the dominant purpose of this law and defeat the very purpose for which it was enacted." *Ross Amigos Oil Company et al. v. State of Texas,** 138 S. W. 2d 798. Commerce Clearing House Court Decisions Requisition No. 237013. Mann & Mann and Max A. Mendlovitz, of Laredo, for plaintiffs in error. Gerald C. Mann, Atty. Gen., and Geo. W. Barcus and A. S. Rollins, Asst. Attys. Gen., for the State. J. W. Townsend of Austin, for Tax Board. Edwin D. Guinn, of Rusk, for Secretary of State.

*The full text of this opinion is printed in **The Corporation Tax Service,** Texas, page 1573.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

IOWA. Docket No. 255. *Sears, Roebuck & Co. v. Roddewig et al.,* 292 N. W. 130. (The Corporation Journal, October, 1940, page 232.) Iowa use tax—collection of tax on mail orders filled by plaintiff's stores in other states. **Appeal filed, June 18, 1940.**

IOWA. Docket No. 256. *Montgomery Ward & Co. v. Roddewig et al.,* 292 N. W. 142. (The Corporation Journal, October, 1940, page 233.) Iowa use tax—collection of tax on purchases by Iowa residents in plaintiff's stores in other states. **Appeal filed, June 18, 1940.**

NORTH CAROLINA. Docket No. 61. *Best & Co. Inc. v. Maxwell, Commissioner of Revenue,* 3 S. E. 2d 292; petition for rehearing dismissed in part and sustained in part, 6 S. E. 2d 893. (The Corporation Journal, November, 1939, page 41.) Constitutionality of North Carolina occupation tax on privilege of taking orders at display room in state on goods to be shipped in interstate commerce. **Appeal filed, April 30, 1940. Probable jurisdiction noted, June 3, 1940.**

OHIO. Docket No. 97. *Voeller et al. v. The Neilston Warehouse Company et al.,* 26 N. E. 2d 442. (The Corporation Journal, October 1940, page 226.) Sale of corporate assets—Ohio statute defining rights of dissenting stockholders. **Appeal filed, May 23, 1940.**

WASHINGTON. Docket No. 822. (October 1939 Term.) *The State of Washington on the relation of Columbia Broadcasting Company v. The Superior Court for King County et al.,* 96 P. 2d 248. (The Corporation Journal, February, 1940, page 105.) Validity of service of process on foreign broadcasting corporation. **Appeal filed, March 18, 1940. Appeal dismissed for want of jurisdiction; writ of certiorari granted, April 8, 1940. Motion to reverse submitted for the petitioner, May 20, 1940. May 27, 1940:** *"Per curiam:* It appearing that the cause has become moot, the judgment of the Supreme Court of Washington is vacated and the cause is remanded for such proceedings as by that court may be deemed appropriate, without costs to either party in this court. *Florida v. Knott,* No. 22 this Term, decided October 9, 1939."

WISCONSIN. Docket No. 46. *J. C. Penney Co. v. Wisconsin Tax Commission,* 289 N. W. 677. (The Corporation Journal, March, 1940, page 135.) Constitutionality of Wisconsin Privilege Dividend Tax. **Appeal filed, April 10, 1940. Certiorari granted, May 20, 1940.**

---

* Data compiled from CCH **U. S. Supreme Court Service, 1940-1941.**

Regulations and Rulings

CALIFORNIA—The State Board of Equalization has indicated that the amount of the federal excise tax imposed upon the manufacturer is considered a part of the sale price in computing the California retail sales tax. (California CT (Corporation Tax) Service, ¶ 64-546.)

DISTRICT OF COLUMBIA—The Corporation Counsel has rendered an opinion to the effect that where a foreign corporation has no office or place of business and owns no property in the District of Columbia, but employs solicitors to solicit orders at definite prices within the District, which orders are subject to approval by the corporation, the income from such sales is taxable under the District of Columbia Income Tax Act. The Corporation Counsel also ruled that only those sales to the United States or the District of Columbia need be reported where the property is delivered and used in the District. (District of Columbia CT (Corporation Tax) Service, ¶ 19-036.)

IOWA—The Attorney General of Iowa has ruled that when real estate is revalued every four years for assessment purposes (1933, 1937, 1941, etc.), it is to be assessed as of its value on January 1 of the appropriate year. (Iowa CT, ¶ 2415.)

MICHIGAN—Preliminary rules and regulations were issued in the latter part of May by the Michigan State Board of Escheats relating to the report of property vested in the state by escheat. (Michigan CT, ¶ 33-850 et seq.) Automobile dealers who operate two or more retail locations within the state are liable under the Chain Store Act even though one of these locations is a used car lot. (Opinion of Attorney General to the Department of State, Michigan CT, ¶ 42-400.)

MONTANA—In an opinion to the Secretary of State, the Attorney General of Montana has indicated that a corporation in existence cannot, as a corporation, be an incorporator in the formation of another corporation. (Montana CT, ¶ .411.)

TEXAS—Warehouses are to be considered "stores" within the meaning of the Texas Chain Store Tax Statute when sales of goods, wares or merchandise are made at such places. (Opinion of Attorney General to Comptroller of Public Accounts, Texas CT, ¶ 48-934.)

UTAH—The Attorney General of Utah has ruled that a foreign corporation need not qualify in Utah before bidding on a contract in the State, but that steps for qualifying should be initiated immediately upon the corporation's obtaining a contract. (Utah CT, ¶ .409.)

WISCONSIN—The Attorney General of Wisconsin has indicated that, in his opinion, an amendment to corporate articles providing that the number of directors may vary, depending upon certain contingencies, is permissible under the provisions of Chapter 180 of the Wisconsin statutes. (Wisconsin CT, ¶ .413.)

WYOMING—A company having a place of business in Wyoming whose sales are interstate is to be regarded as required to collect the use tax on its sales. (Opinion of Attorney General to Sales and Use Tax Division, Wyoming CT, ¶ 7909.)

No matter in how many different states a lawyer's corporation client is doing business, no matter how many different taxes must be paid in each nor how many state reports must be filed, the Corporation Trust system makes it easy for the lawyer to keep a supervising eye on it all—reduces it to one-thing-at-a-time with an individual notification of each individual requirement.